

FOR PUBLICATION

U.S. BANKRUPTCY COURT
FILED

DEC 10 2003

CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
San Jose, CA

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re

ELISA CUMBERBATCH,

Debtor.

) Case No. SA 03-14419 JR

) Chapter 7

) MEMORANDUM OPINION

) Date: October 14, 2003

) Time: 2:30 P.M.

) Room: 5A

I. INTRODUCTION

On June 10, 2003, Elisa Cumberbatch ("Debtor") filed a petition under chapter 7 of the Bankruptcy Code. Debtor listed real property located 25112 Bellota, Mission Viejo, California (the "Property") on her schedules. Debtor also claimed an exemption under § 704.720¹ in the amount of \$75,000 for the Property.

The chapter 7 trustee ("Trustee") filed a motion objecting to Debtor's claim of exemption. Guy Cumberbatch, Debtor's former

¹ Unless otherwise indicated, all section, division, title and code references are to the California Code of Civil Procedure ("CCP") §§ 1-2107.

1 husband, joined in Trustee's motion. After the hearing on
2 October 14, 2003, I took the matter under submission.
3

4 II. JURISDICTION

5 I have jurisdiction over this matter under 28 U.S.C.
6 § 157(b)(1). This is a core proceeding under the Bankruptcy
7 Code, as defined in 28 U.S.C. § 157(b)(2)(A) and (B).
8

9 III. STATEMENT OF FACTS

10 On December 12, 2002, a dissolution judgment (the
11 "Judgment") was entered in state court dissolving the marriage
12 between Guy and Debtor. The Judgment also determined their
13 respective interests in certain marital assets. In particular,
14 the Judgment ordered the Property sold and that Guy be reimbursed
15 \$19,027 by Debtor from her share of the net proceeds.²

16 Thereafter, the Property was sold on May 14, 2003, and after
17 all liens, taxes, and costs of sale were satisfied, \$105,454.78
18

19 ² The Judgment provides in relevant part:

20 The real property and residence located at
21 25112 Bellota, Mission Viejo, California shall
22 be forthwith listed for sale and remain listed
23 for sale until sold. Each party [sic] to
24 cooperate in all aspects of that sale of this
25 property. The property shall be listed with a
26 mutually agreed upon real estate broker. The
27 court shall reserve jurisdiction over the
28 naming of the broker, listing price and
distribution of the net sales proceeds.

Judgment (Dec. 12, 2002), at 2. The Judgment allocated \$17,000 from
the net proceeds of sale to Guy and divided the remainder equally
between Guy and Debtor. The additional \$19,027 of reimbursement was
for mortgage payments, car payments, property taxes, insurance
premiums and property division equalization. Id. at 3-5.

1 remained in escrow for distribution to the parties. Debtor filed
2 her chapter 7 petition on June 10, 2003. In his objection,
3 Trustee argued that Debtor is not entitled to a homestead
4 exemption because (1) the Property was sold pre-petition, (2)
5 Debtor never recorded a declaration of homestead, and (3) the
6 sale was not conducted pursuant to the enforcement of a money
7 judgment. Guy argued that Debtor's claimed homestead exemption
8 was improper because she has no interest in the Property as a
9 result of the Judgment.

11 IV. DISCUSSION

12 A debtor is permitted to exempt certain property of the
13 bankruptcy estate including "property that is specified under
14 subsection (d) of this section, unless the State law that is
15 applicable . . . specifically does not so authorize" 11
16 U.S.C. § 522(b). California has "opted out" of the federal
17 exemption scheme provided by the Bankruptcy Code. CCP § 703.130.
18 Therefore, a debtor's right to exemptions is governed by
19 California law. In re Mulch, 182 B.R. 569, 572 (Bankr. N.D. Cal.
20 1995).

21 A. Homestead Exemptions Under California Law

22 Under California law, there are two types of homestead
23 exemptions: a declared homestead and an automatic homestead
24 exemption.³ A declared homestead exemption requires that the
25

26
27 ³ A declared homestead is governed by Article 5, Chapter 4,
28 Division 2 of Title 9 of the code. See CCP §§ 704.910-704.995. An
automatic homestead exemption is governed by Article 4. See id. §§
704.710-704.850. See Kelley v. Locke (In re Kelley), 300 B.R. 11,
17-18 (9th Cir. BAP 2003).

1 party residing in the dwelling record a declaration of homestead
2 in the office of the county recorder. CCP § 704.920. An
3 automatic homestead exemption arises by operation of law when a
4 party's principal dwelling is sold in a forced sale. Mulch, 182
5 B.R. at 572. The party claiming the exemption must have resided
6 in the dwelling continuously from the time the creditor's lien
7 attached until either the sale of the dwelling or the judicial
8 determination that the exemption applies.⁴ Kelley, 300 B.R. at
9 17.

10
11 B. Debtor's Right to a Homestead Exemption

12 Here, Debtor never recorded a declaration of homestead.
13 Thus, she is only eligible for the automatic homestead exemption.
14 Section 704.720 provides:

15 If a homestead is sold under this division . . . the
16 proceeds of sale . . . are exempt for a period of six
17 months after the time the proceeds are actually
received by the judgment debtor

18 CCP § 704.720. Thus, assuming the requirements of the automatic
19 homestead exemption are met, the proceeds of sale of the
20 homestead are exempt for up to six months after receipt.

21 Here, Debtor filed her petition within a month after escrow
22 closed. Because the sale of the Property occurred pre-petition,
23 Debtor must claim an exemption in the proceeds of the sale.⁵

24
25 ⁴ Neither Trustee nor Guy contend that Debtor did not live at
26 the Property until the sale was completed.

27 ⁵ Property that can be claimed as exempt is limited to
28 property of the estate. 11 U.S.C. § 522(b). The estate consists of
all legal and equitable property interests of the debtor at the
time the petition is filed. 11 U.S.C. § 541. Here, Debtor did not
own the Property when she filed her petition because the sale had

1 Trustee argues that the automatic homestead exemption does
2 not apply here. He reasons that the sale was not a forced sale
3 because the sale was pursuant to a judgment of dissolution and
4 not a money judgment.

5 Section 703.140 provides in relevant part:

6 (a) In a case under Title 11 of the United States
7 Code,⁶ all of the exemptions provided by this chapter,
8 including the homestead exemption, other than the
9 provisions of subdivision (b) are applicable regardless
10 of whether there is a money judgment against the debtor
or whether a money judgment is being enforced by
execution sale or any other procedure

11 CCP § 703.140. Cases interpreting this provision have confirmed
12 that property need not be sold pursuant to a money judgment for a
13 debtor in bankruptcy to be entitled to a homestead exemption. In
14 re Norman, 157 B.R. 460 (Bankr. C.D. Cal. 1993); Kendall v.
15 Pladson (In re Pladson), 35 F.3d 462 (9th Cir. 1994) ("Pladson
16 II").

17 The application of the automatic homestead exemption in
18 bankruptcy under California exemption law was highlighted in In
19 re Pladson, 154 B.R. 305 (N.D. Cal. 1993) ("Pladson I").⁷ There,
20 the district court held that a sale of a debtor's residence in a
21 chapter 7 liquidation was not an enforcement of a money judgment,
22

23 _____
24 previously occurred. Therefore, the Property is not part of the
25 bankruptcy estate and Debtor can not claim it as exempt.

26 ⁶ Title 11 of the United States Code, commonly referred to as
the Bankruptcy Code, is found at 11 U.S.C. §§ 101-1330.

27 ⁷ The Ninth Circuit explained that for many years prior to
28 Pladson I, "courts routinely have allowed bankruptcy debtors to
claim the California homestead exemption." Pladson II, 35 F.3d at
463.

1 and therefore the debtor was not entitled to an automatic
2 homestead exemption. Id. at 306.

3 The Pladson I decision evoked an immediate response from
4 other courts and the California legislature. See Norman, 157
5 B.R. 460; Cal. Code. Civ. Proc. § 703.140 (historical and
6 statutory notes).⁸

7 First to respond to Pladson I, the Norman court undertook a
8 lengthy analysis of the exemption provisions provided under
9 California law. Norman, 157 B.R. at 461-64. The court concluded
10 that, pursuant to § 703.140,⁹ the homestead exemptions are
11

12 ⁸ In amending § 703.140, the California legislature
13 emphatically stated:

14 "The Legislature finds and declares that the
15 amendment of Section 703.140 of the Code of
16 Civil Procedure by Section 1 of this act
17 pertaining to exemptions in bankruptcy is not
18 a change in, but is declaratory of, existing
19 law. The Legislature further finds and
20 declares that the decision in [Pladson I],
21 holding that the homestead exemption is not
22 available in bankruptcy, is not a correct
23 interpretation of California law. The
24 Enforcement of Judgments Law provides
25 exemptions for various forms of property,
including homesteads, and contains a number
of special procedural protections for special
forms of property. It is not, and never has
been, the intention of the Legislature to
restrict any of the exemptions in bankruptcy
because of technical language concerning the
procedures for claiming exemptions in state
money judgment enforcement proceedings under
the Enforcement of Judgments Law.

26 CCP § 703.140 (historical and statutory notes).

27 ⁹ At the time Norman was decided, § 703.140 did not include
28 the more explicit language added after Pladson I. It read:

(a) If a petition is filed under Title 11 of

1 "available in bankruptcy cases regardless of whether a sale
2 pursuant to a money judgment occurs." Id. at 464.

3 The California legislature responded shortly thereafter,
4 amending § 703.140 and clarifying the broad application of
5 exemptions in bankruptcy cases. Thus, when Pladson I reached the
6 Ninth Circuit, the court reversed the decision without lengthy
7 discussion, noting both the intervening amendment of § 703.140
8 and the thorough analysis provided by Norman. Pladson II, 35
9 F.3d at 465-66, fn. 7.

10
11 Therefore, it is clear that a sale pursuant to a money
12 judgment is not required for the automatic homestead exemption to
13 apply in bankruptcy.¹⁰ This case, however, presents a new
14 wrinkle in the application of the California homestead exemption
15 in bankruptcy cases. Instead of a debtor's residence being sold
16 during the bankruptcy, as was the case in Pladson, here, the
17 Property was sold pre-petition. Debtor then claimed an automatic
18 homestead exemption in the proceeds of sale.

19 The language of § 703.140 does not expressly cover this
20

21
22 the United States Code, the exemptions
23 provided by this chapter. . . shall be
24 applicable.

25 Norman, 157 B.R. at 463 (quoting CCP § 703.140).

26 ¹⁰ Other courts have reached the same conclusion by finding
27 that a bankruptcy petition in itself meets the "forced sale"
28 requirement of the automatic homestead exemption. See e.g. Harris
v. Herman (In re Herman), 120 B.R. 127, 130 (9th Cir. BAP 1990).
These courts have deemed the petition the equivalent to a levy by
the trustee on real property owned by the debtor on the petition
date. Id.

1 factual scenario.¹¹ It is well-settled that a debtor's exemption
2 rights are determined as of the petition date. Herman, 120 B.R.
3 at 130. Although § 703.140 eliminates the forced sale
4 requirement for sales of real property that occur in bankruptcy,
5 it does not retroactively transform a pre-petition sale into a
6 forced sale on the filing of a bankruptcy petition. Therefore,
7 when a sale of real property occurs pre-petition, a debtor must
8 satisfy the standard homestead exemption requirements under
9 either Article 4 or Article 5. For the automatic homestead
10 exemption, this includes the requirement that the sale be
11 conducted to satisfy a money judgment.
12

13 Therefore, the key issue is whether the Judgment is a money
14 judgment for the purposes of the automatic homestead exemption.
15 No cases address whether a dissolution judgment that calls for a
16 sale of marital property and distribution of the proceeds
17 constitutes a forced sale in connection with the enforcement of a
18 money judgment. Indeed, cases applying the automatic homestead
19 exemption have described the forced sale requirement differently.
20 See In re Wilson, 90 F.3d 347, 351 (9th Cir. 1996) ("the
21 automatic homestead exemption protects a debtor only in the
22 context of a forced lien sale"); Amin v. Khazindar, 112
23 Cal.App.4th 582, 589 (2003) ("the automatic homestead only
24

25 ¹¹ Section 703.140(a) is written in the present tense, stating
26 that the homestead exemption applies in bankruptcy "regardless of
27 whether there is a money judgment against the debtor or whether a
28 money judgment is being enforced by execution sale" CCP §
703.140(a). Thus, the statute does not expressly address the
application of exemptions when the property claimed as exempt was
sold prior to the petition date.

1 entitles a debtor to protection from a forced execution sale");
2 Katz v. Pike (In re Pike), 243 B.R. 66, 69 (9th Cir. BAP 1999)
3 ("all property owners have automatic homestead exemption, which
4 does not arise absent a forced judicial sale"). However, the
5 Ninth Circuit has emphasized "the well-established principle
6 articulated by the California appellate courts that California
7 homestead exemption statutes should be broadly and liberally
8 construed." Pladson II, 35 F.3d at 465 (citing Webb v. Trippet,
9 235 Cal.App.3d 647, 650 (1991)).
10

11 The term "money judgment" is defined under Title 9 as "that
12 part of a judgment that requires the payment of money." CCP §
13 680.270. A judgment ordering the sale of real property is
14 enforced by a writ of possession or sale. Id. § 712.010. "The
15 judgment debtor may be entitled to claim exemptions for property
16 sought to be applied to the satisfaction of a money judgment
17 pursuant to a writ of possession or sale." Id. § 712.040
18 (legislative committee comment). Therefore, when real property
19 is levied on and applied to satisfy a money judgment, the
20 exemption laws are available to protect the judgment debtor.
21 This is also true when real property held in joint ownership is
22 ordered sold to satisfy individual interests in the property.
23 See Amin, 112 Cal.App.4th at 591 (stating that a partition sale
24 of real property between tenants in common constitutes a forced
25 sale for the purposes of the automatic homestead exemption).
26

27 Here, the state court ordered that Debtor reimburse Guy for
28 certain of his contributions to community assets. The Judgment

1 was a money judgment because part of the judgment required the
2 payment of money. See CCP § 680.270. The Judgment ordered the
3 sale of the Property to satisfy in part a money judgment.
4 Therefore, the Judgment constitutes a forced sale of the Property
5 for the purpose of satisfying a money judgment. Accordingly,
6 Debtor is entitled to an automatic homestead exemption in the
7 proceeds of sale.

8
9 C. Debtor's Interest in the Proceeds of Sale

10 Guy argues that, pursuant to the Judgment, Debtor has no
11 interest in the proceeds of sale. This contention lacks merit.
12 After liens, taxes, and costs were paid, \$105,454.78 remained in
13 escrow for distribution to the parties. The state court ordered
14 that Guy receive the first \$17,000 to satisfy his reimbursement
15 claim. The remaining proceeds (\$88,454.78) were to be divided
16 equally (\$44,227.39 to each party). The Judgment then required
17 Debtor to pay \$19,027.00 in equalization payments from her
18 portion of the sale proceeds. This leaves Debtor with
19 \$25,200.39. Therefore, Debtor has an interest in the proceeds of
20 sale and is entitled to an automatic homestead exemption to
21 protect that interest.

22
23 V. CONCLUSION

24 The language, legislative history and cases interpreting
25 § 703.140(a) support that in bankruptcy, the homestead exemption
26 is not limited to when a debtor's residence is sold to enforce a
27 money judgment. However, when a sale of real property occurs
28 prior to the bankruptcy petition, § 703.140 does not apply and a

1 debtor must satisfy the standard homestead exemption
2 requirements. For the automatic homestead exemption, this
3 includes the requirement that the sale be conducted pursuant to a
4 money judgment. Here, the sale of the Property was ordered to
5 satisfy a judgment for the payment of money to reimburse Guy in
6 connection with a marriage dissolution. Therefore, the sale was
7 a forced sale, and Debtor's claimed automatic homestead exemption
8 in the proceeds on the sale of the Property, which occurred
9 within six months of the filing of the petition, was proper.
10

11 This opinion shall constitute my findings of fact and
12 conclusions of law.
13

14
15 Dated:

16 DEC 10 2003

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18 _____
19 JOHN E. RYAN
20 United States Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re

ELISA CUMBERBATCH,

Debtor.

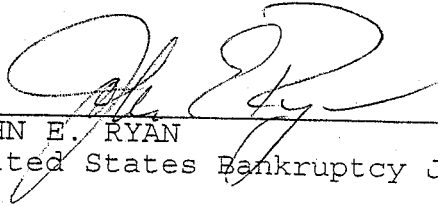
) Case No. SA 03-14419 JR
)
) Chapter 7
)
) ORDER
)
) Date: October 14, 2003
) Time: 2:30 P.M.
) Room: 5A

In accordance with my findings of fact and conclusions of law set forth in my memorandum opinion of this date, it is

ORDERED that the objection to Debtor's claim of exemption for the proceeds of the sale of real property located at 25112 Bellota, Mission Viejo, California is OVERRULED.

Dated:

DEC 10 2003


JOHN E. RYAN
United States Bankruptcy Judge